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Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 02 1999
FCC MAIL ROOM

In the Matter of)
)
Creation of a Low Power) MM Docket No. 99-25
Radio Service.) RM-9028/RM-9242

TO: Commissioners, Federal Communications Commission.

COMMENTS OF MICHAEL ROBERT BIRDSILL.

I am Michael Robert Birdsill. I have read the entire Notice of Proposed Rulemaking ("NPRM") concerning MM Docket No. 99-25 ("99-25") several times since it's Release in an effort to absorb all the Legal and Technical details. As a Radio Broadcaster for over two decades I must admit I was stunned that you, the Federal Communications Commission ("FCC"), would propose such a Radio Service, let alone propose to change the Interference Standards for the FM service in order to achieve this goal. I favor the use of spectrum other than the established AM or FM Bands, especially with the impending return of spectrum to the FCC via the Digital TV timetables.

Having said that, I also am an adult, and know full well that compromise is the way we get through life. I offer the following Comments which proposes a compromise of sorts to your Low Power FM ("LPFM") plan, as outlined in the NPRM.

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LEGAL MATTERS.

It is my opinion that there should be a 2 year moratorium on the acceptance of any LPFM Applications once the Report and Order/Memorandum Order and Opinion that establishes such a service is issued. The purpose of this delay would be to allow existing FM Broadcasters an opportunity to effect any upgrades (Channel and/or Transmitter site) that could maximize their service areas. Additionally, this time period would be used to adopt a Digital FM Transmission Standard. Furthermore, I believe that upon the Release of the Order establishing a LPFM service, the FCC should **freeze all new FM Allocations**. This freeze would not include the upgrade efforts of any FM Broadcaster who would be maximizing their service area through such Allocation procedures as Adjacent Channel Upgrades (One Step Applications), Non-Adjacent Channel Upgrades (Section 1.420 (g)), Change of Community of License (Section 1.420 (i)), or a Channel swap between two FM Broadcasters.

The underlying reason to freeze all new FM Allocations would be to allow the FM Band to "settle". The "Application Mills" of the past have given way to the "FM Allocations Mills" of the present. Additionally, once Auctions have taken place for the existing FM Allocations, **any FM Allocations not bid on at auction would be deleted from the Table of FM Allotments**. Again, this would allow the FM Band to reach a state of equilibrium prior to the acceptance of Applications for LPFM.

I believe the LPFM service should be restricted to the

Non-Reserved (Commercial) Band. The Reserved (Non-Commercial) Band has always relied on Contour overlap to Allocate Channels which has resulted in a patch work of Stations of various FM Classes (including Class D). I believe those Stations, along with the FM Translators operating in the Reserved Band, have already pushed that part of the FM spectrum to the point of congestion. A LPFM station should be able to operate as a Commercial or Non-Commercial entity. A LPFM Permittee/Licensee should not hold any other Media interest, and could only hold **a single LPFM Permit/License**. Otherwise, the "local" aspect of this service would be lost.

It is my opinion that the LPFM service **should operate as a Secondary Service under Part 74 of the FCC Rules**. An LPFM Station would be allowed to apply for "Permanent Status" once it has been Licensed for 2 years. "Permanent Status" would allow the LPFM to attain a "quasi-primary" status, in that it could not be displaced as long as it remained at it's Licensed facilities and Licensed site. Changing the Licensed facilities and/or site would cause the LPFM to revert back to Secondary Status, until the Licensee could apply for "Permanent Status" again after 2 years. As a Part 74 Licensee, the LPFM Station would not be required to adhere to Part 73 requirements such as a minimum operating schedule, installing E.A.S. systems, etc. However, the LPFM could certainly do so on a voluntary basis.

The LPFM service would not be allowed to "displace" any existing FM Translators (Applications/Permits/Licenses) at the

time the FCC begins to accept Applications for LPFM. Infact, during the first six months in which the FCC accepts Applications for the LPFM service, only Applications from exiting FM Translators wishing to change from Part 74 Translators to Part 74 LPFM Stations will be accepted. At first this would seem to be a radical and unthinkable proposal. Hundreds-maybe even thousands-of FM Translators applying for LPFM status. But, keep in mind the criteria for holding a LPFM Permit/License: Channels are restricted to the Non-Reserved Band (Commercial Band), and a LPFM Permittee/Licensee could not hold any other media interest, therefore no "fill-in" FM Translators would be eligible. So, the FM Translators that could apply for LPFM status are those operating in the Non-Reserved Band (Commercial Band) that **are owned by independent parties**. Therefore, we are talking about a small percentage of existing FM Translators. Why should I put forth such as proposal ? Here is an example: The Weaverville Translator Company, Inc., located in Weaverville, California has been operating as an independent, non-profit group that has provided TV and FM Translator service to the residents of Weaverville and the surrounding areas for nearly 30 years. Under this proposal, that group could **convert one of their existing FM Translators to a LPFM Station**. In this way, the local School District could broadcast school closing in the Winter and allow the high school to program the LPFM Station as a learning laboratory. I envision that LPFM Construction Permits would be valid for 3 years. The Renewal cycle would be the same as full power FM Stations. The use of

Auxiliary Channels would be allowed with LPFM Stations. I favor short filing windows for Applications for the LPFM service, and lotteries would be used to award a LPFM Permit in the case of Mutually Exclusive Applications. While the use of lotteries to resolve Mutually Exclusive Applications would seem to run contrary to the mandate by Congress to use Auctions, however in the LPFM service a Permittee/License **can hold only one Permit/License at a time**, therefore the Applicant not selected by the lottery in a Mutually Exclusive situation would have the option of applying for another LPFM Channel in the same area or a LPFM in another area.

TECHNICAL MATTERS.

LPFM Stations would be Licensed under Part 74 of the FCC Rule. The output power/height above average terrain (HAAT) would comply with Section 74.1235 of the FCC Rules, which is currently used to regulate the power/HAAT of FM Translators. In this way, FM Translators eligible to migrate to LPFM status would also have to comply with Section 74.1235, even if that FM Translator was previously "grandfathered" with facilities in excess of Section 74.1235. A mileage separation chart would be derived from Section 74.1235 **for this single Class of LPFM.**

I think that elimination of the 3rd adjacent FM Channel protection for the LPFM service may be appropriate. However, I firmly believe that elimination of the 2nd adjacent FM Channel

protection for LPFM is not warranted, given the fact the FM Receiver specifications are not mandated by any government agency at this time, and I suspect that a majority of FM Receivers in use today could not effectively select between 2nd adjacent FM Channel stations. Not to mention the possible impact on the development of a Digital FM Transmission system.

CONCLUSION.

While I strongly believe that a new Allocation of spectrum would be the best solution for the institution of a Low Power Radio Service, in the spirit of compromise I offer these Comments which describe a LPFM service Licensed under Part 74 of the FCC rules, and ask you to consider implementing the LPFM service I have outline herein. Respectfully submitted.



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DATE: 30 July 99